D.B.CIVIL SPECIAL APPEAL N0. 48/2006
Narender Kumar Joshi v. State of Rajasthan & ors.

Date of order : 13.03.2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE GOVIND MATHUR

Shri H.S.Sidhu for the appellant

This special appeal is directed against the order of the learned Single Judge dated 14.11.2005 in S.B.Civil Writ Petition no. 1151/1996 dismissing the writ petition of the appellant. The appellant had filed the writ petition seeking direction upon the respondents to consider his case for appointment on the post of Teacher Gr.III.

Three contentions were raised in support of the appellant's case. Firstly, it was submitted that appointments were restricted to candidates registered with the Employment Exchange which amounts to infringement of the fundamental right under Article 16 of the Constitution of India. Reliance was placed on Arun Kumar Nayak v. Union of India, 2006 (4) Service Cases Today 362. In any view, it was submitted that the appellant was registered with Employment Exchange in 1988, but ignoring his registration candidates registered later in 1995 were considered resulting in denial of consideration to the appellant. Thirdly, it was submitted that the advertisement and

the selection made pursuant thereto was violative of rule 16 of the Rajasthan Educational Subordinate Service Rules, 1971.

The advertisement in question was issued in May, 1995. There was no clear term in the advertisement to the effect that candidates from open market could not apply. The advertisement no doubt stated that call letters will be issued to candidates registered with the concerned Employment Exchange office, District Social Welfare office, and District Sainik Board. The advertisement also stated that names were to be called for from the Employment Exchange of candidates belonging to scheduled castes, scheduled tribes, other backward classes (OBC), handicapped, widow/destitute women and serving government servants.

Counsel produced the certificate of registration to show that the appellant was registered in 1988; the registration was renewed from time to time, and at the time of advertisement he held valid registration. If it is a fact that appellant stood registered with the Employment Exchange, his grievance can be summed up to non-sponsoring of his name by the Employment Exchange. There is nothing on record to suggest that the appellant made any grievance to that effect before the concerned authorities that his name has not been sponsored/sent by the concerned Employment Exchange. The writ

petition was filed on 9.4.1996. The process of selection was over by then. The appellant has himself brought on record copies of appointment orders from which it appears that appointment orders were issued on 10.1.1996 and 28.3.1996. Counsel submitted that the fact that the advertisement culminated into selection and appointments is of no consequence in view of the pendency of the writ petition. In this regard he placed reliance on a decision of this Court in Asha Ram v. Rajasthan Public Service Commission, 2001 (1) RLR 75. It was held by the Division Bench in that case that where the person had filed the writ petition in time, the fact that selection process was finalised later will not be a ground to deny him his right of consideration. Reliance on the judgment, it would appear, is totally misconceived, for, as seen above, the appellant filed the writ petition after the selection process had already been finalised and appointments made. He cannot therefore invoke the ratio of the decision in support of his case.

All said and done, it is the admitted position that selections have been finalised pursuant to advertisement. No interim order was passed to keep any post vacant for him. It would be futile to go into the question as to whether the appellant was prevented by the terms of advertisement from submitting application for his appointment at

this stage. We are of the view that that the grievance has become stale with the passage of time.

In the result, the appeal is dismissed.

mathur/ (GOVIND MATHUR) J. (S.N.JHA), C.J.